

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Kerry Garcia.

Plaintiff,

vs.

No. 1:13-cv-00095-CG-LFG

**Knight Transportation Inc.,
an Arizona based Company**

Defendant.

FIRST AMENDED COMPLAINT FOR PERSONAL INJURY AND DAMAGES

Plaintiff, Kerry Garcia, individually and through his attorney, Kenny C. Montoya agree with Defendant's stipulation to amend the complaint changing the defendant from Kevin Knight as CEO of Knight Transportation to Knight Transportation Inc., under Federal Rules of Civil Procedure Rule 15(a). Plaintiff states the following as to his complaint against Defendant, Knight Transportation Inc.:

JURISDICTION

1. Plaintiff Kerry Garcia was at all times pertinent hereto a resident of the Albuquerque, Bernalillo County, New Mexico.
2. Knight Transportation Trucking Service is an Arizona based for-profit business incorporated in the State of Arizona. Knight Transportation's principal place of business is located in Arizona with maintenance facilities in Pennsylvania, Georgia and Texas.
3. All parties adverse to each other are citizens of different states.
4. At the time of the events giving rise to this litigation, upon information and belief, Knights Transportation owned, operated, sold, and/or leased and maintained semi trucks which in the regular course of Knight's business were engaged in interstate travel.

5. Upon information and belief, Kerry Garcia leased the semi-truck from Knights Transportation and was contracted to have the truck maintained and repaired by Knight Transportation.

6. At all times pertinent hereto, Knight Transportation acted through its employees, agents, and representatives and is liable for their acts or omissions pursuant to the doctrine of *respondeat superior*.

7. Knight Transportation Inc. is responsible for the policies, practices, and customs of its employees, agents and/or representatives, as well as the hiring, screening, training, and supervision of its employees, agents and/or representatives.

8. In the course of the improper repair and maintenance of the semi-truck by Knight Transportation the radiator exploded and burnt Plaintiff Kerry Garcia; Defendant committed tortuous acts against the plaintiff in the States of Arizona, New Mexico, Pennsylvania, Georgia and other states that the truck was operated in and continued to overheat.

9. The acts or omissions of the defendant that resulted in the personal injury to Kerry Garcia occurred on Highway 17 by Camp Verde, Arizona.

10. Plaintiff has suffered injuries in excess of \$75,000.00 as a result of the defendants' acts or omissions.

11. This Court has jurisdiction over the parties and the subject matter of this litigation.

12. Venue is proper in this Court.

FACTUAL BASIS

14. On May 11, 2012, Plaintiff leased a semi-truck from defendant with a contract that included a maintenance clause that was agreed that the truck's maintenance work would be performed by Knight Transportation and paid for by Kerry Garcia.

15. On at least three occasions between May 11, 2012 and October 22, 2012 Plaintiff reported the coolant system was faulty causing the truck to overheat and defendant worked on the system and charged Plaintiff for the work.

16. On October 22, 2012 Kerry Garcia was driving his lease to own semi-truck as an independent contractor on Highway 17 near Camp Verde Arizona, when he noticed the gauges on his truck showed that the engine was overheating..

17. Plaintiff Kerry Garcia pulled over on the side of the road, opened the hood of his truck and checked the radiator hose with his hand.

18. At the same time the radiator cracked and extremely hot coolant was sprayed on Kerry Garcia from his neck to his waste causing severe pain and lifelong scars from the second degree burns.

**COUNT I: NEGLIGENCE Per Se: CONDUCT CAUSING PERSONAL INJURY,
RESPONDEAT SUPERIOR LIABILITY**

All Previous paragraphs are incorporated herein by reference.

19. Knight Transportation owed a duty to Kerry Garcia to use reasonable and ordinary knowledge of checks and maintenance procedures to repair and test the radiator and coolant system that operates his semi truck.

20. It is by information and belief that trained mechanics understand the radiator could explode if proper testing and repair is not conducted on a semi truck.

21. The harm resulting to Kerry Garcia was proximately caused by the defendant's failure to use ordinary care and due diligence in the repair of his semi truck's coolant system.

22. The defendant negligently breached his duty to Kerry Garcia by committing one or more of the following acts or omissions:

- a. Leasing Kerry Garcia semi truck with a faulty coolant system on May 11, 2012;
- b. Failure to possess and apply the knowledge available to a reasonably prudent mechanic when on multiple maintenance reports that the truck continued to overheat.
- c. Failure to properly diagnose and repair the coolant system on June 27, 2012 when the truck was taken in for repairs for the coolant system and the cap surge tank overflow was replaced but soon after was low on coolant again and overheating;
- d. Failure to properly diagnose and repair the coolant system on July 15, 2012 when the truck was checked for coolant leaks and the coolant was drained and replaced;

23. The above allegations of negligence, breaches and failures of duty by the defendants owed to Plaintiffs were a direct and proximate cause of all the injuries and damages suffered by the Plaintiffs.

24. Kerry Garcia suffered extensive burns on his neck, chest, stomach and arms on Oct 22, 2012, and continues to suffer from emotional distress when trying to service his truck.

Kerry Garcia is entitled to recover the reasonable expenses of his air-medical evacuation and medical expenses at the hospital and burn center; the pain and suffering experienced by Kerry Garcia between the time of his injury and continuing to this date, the monetary reimbursements of his past maintenance charges of work completed to repair the overheating coolant system and charges sustained to repair the radiator after the accident, and his lost wages, and the pain and suffering, and permanent scars caused by the burns.

JURY DEMAND

Plaintiffs hereby request a jury trial.

WHEREFORE, Plaintiffs seek compensatory damages against the defendant in an amount to be established at trial, punitive damages, attorney fees, costs, pre-judgment and post-judgment interest and further relief as the court may deem appropriate.

Submitted by:

Kenny C. Montoya Law Office

/s/ Kenny C. Montoya
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CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of July, 2013 I served the forgoing on the following non-CM/EIF participants via Certified mail, return receipt requested, addressed as follows: Chuck Perry, Knight Transportation, 5601 W. Buckey Rd, Phoenix AZ 85043 and defendant's attorney Geoffrey D. White of BUTT THORTON & BAEHR PC AT PO Box 3170, Albuquerque, NM, 87190-3170.

/s/KENNY C. MONTOYA Date July 15, 2013
Kenny C. Montoya